

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 459.103 and 459A.104, the Environmental Protection Commission hereby amends Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

These amendments correct definitions and requirements related to animal feeding operations that are needed to make Chapter 65 consistent with statutory amendments adopted during the 2008 legislative session. Additional changes are adopted to bring administrative rules into compliance with federal regulations related to the NPDES permit program and to address outdated references.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 11, 2009, as **ARC 7564B**. Oral comments were received at two of the four public hearings and 11 written comments were received during the comment period.

As a result of the written and oral comments, the following changes have been made to the amendments as published under Notice of Intended Action:

In Items 3 and 6, the “equivalent or better” demonstration in subparagraph 65.3(3)“g”(1) and subparagraph 65.101(6)“b”(1), respectively, is modified to refer to the federal 100-foot setback rather than to Iowa’s 200- or 800-foot setbacks. Subparagraph (1) of 65.3(3)“g” and 65.101(6)“b” now reads as follows:

“(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(c)(5).”

In Item 4, the last sentence in paragraph 65.17(6)“b” regarding penalty preclusion is retained and a sentence is added indicating that the preclusion does not apply to a confinement feeding operation owner subject to the NPDES permit program. Paragraph 65.17(6)“b” now reads as follows:

“b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map may be used to indicate crop schedules by field or farm. The planned crop schedule shall name the crop(s) planned to be grown for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted or the first year manure will be applied. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances. However, the penalty preclusion in the previous sentence does not apply to a confinement feeding operation owner subject to the NPDES permit program.”

These amendments shall become effective October 14, 2009.

These amendments are intended to implement Iowa Code sections 459.102, 459.103, 459.312, 459.314, 459A.103, 459A.104, 459A.208 and 459A.303.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 65] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7564B**, IAB 2/11/09.

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[For replacement pages for IAC, see IAC Supplement 9/9/09.]